

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE: Ditty, Stephen & Linda

Case No. 10-40537-RJK

Debtors

Chapter 13

**NOTICE OF HEARING AND MOTION
FOR APPROVAL OF SALE OF PROPERTY OF THE ESTATE**

1. Stephen and Linda Ditty, ("Debtor"), move the court for relief requested below and give notice of hearing.

2. The court will hold a hearing on this motion on Wednesday, March 14, 2012 at 9:30 a.m., in U.S. Courthouse, Suite 8 West, 300 South Fourth Street, Minneapolis, Minnesota before the Honorable Robert J. Kressel, Bankruptcy Judge.

3. Any response to this motion must be filed and served not later than Wednesday, March 7, 2012, which is seven days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed on January 27, 2010. The case is now pending in this court.

5. This motion arises under 11 U.S.C. §§363 and 1303 and Bankruptcy Rule 6004. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9006-1, 9013-1 through 9013-5, 6004-1, and such other Local Rules as may pertain. Debtor requests relief with respect to an order approving the sale of the Debtor's and estate's interests in certain real property, all as more specifically set forth herein.

6. One the date of filing, Linda Ditty and her brother, Carl Holmgren, were owners of property subject to a life estate on the life of Genevieve Holmgren, their mother. Within 180 days of filing this case, Genevieve Holmgren, passed away on February 7, 2010. Linda and her brother Carl Holmgren held a beneficial life estate interest as Tenants in Common in their mother's home located at 3214 Tyler Street NE, Minneapolis, MN 55418, legally described as "Lot 012, Block 004, Chute Bros 1st Addition to City of Minneapolis, according to the recorded plat thereof." Hennepin County, Minnesota ("Property").

7. The Debtor was advised by counsel that the Debtor's interest in the Property was property of the bankruptcy estate by operation of 11 U.S.C. §541(a)(5) and must be marketed for sale. The Chapter 13 Trustee was notified and an amended Schedule B was filed to disclose the Debtor's interest in the Property.

8. The Chapter 13 plan was modified to provide that the Debtor would pay her portion of the net sale proceeds of the Property into her chapter 13 plan as an additional payment.

9. Coldwell Banker Burnet listed the Property with MLS December 5, 2010 for \$140,000.00. The price was reduced to \$129,888.00 in May of 2011, with five subsequent price reductions. On January 8, 2012, the listing price was reduced to \$92,000.00.

11. The Property is subject to a home equity line with TCF in the amount of approximately \$67,423.46 as of February 20, 2012.

12. On December 17, 2011, Linda Ditty passed away. There was no will. Her spouse and Co- Debtor, Stephen Ditty, inherited Linda's one half interest in the Property through intestate succession. The paperwork was submitted to the Probate Court for filing.

13. Although the Property was listed for sale over a year ago it has had only one second showing. This showing resulted in an offer from EWR Services, LLC ("Buyer"), to purchase the Property for \$81,000.00, with no inspection or appraisal contingency, to be paid upon approval of the sale by the bankruptcy court and execution by the joint owner, the Debtor and/or the Jasmine Z Keller, Chapter 13 Trustee ("Trustee") of such documents as may be necessary to effect the transfer of the Property. \$500.00 was tendered to be deposited as earnest money upon final acceptance of the Purchase Agreement. See Purchase Agreement attached.

14. The purchase price is being financed 100% by Render Development. See Render Development correspondence attached.

15. The Sellers have no connection with the Buyer.

16. The sale of the Debtor's and bankruptcy estate's interests in said Property shall be "as is," and subject to the TCF home equity loan, any liens, covenants, reservations and restrictions of record; any unpaid taxes, utility bills, charges or assessments of any kind or nature whatsoever, whether known or unknown; any defect of any kind in the record title to the Property, any hazardous condition, disrepair, building code violation or other physical defect of the Property, whether past, present, or future, latent or patent, it being the intention that no warranties or representations of any kind are being made by the Debtor to the purchasers.

17. The Debtor believes the proposed purchase price for the Property is fair and reasonable. The Property has been on the market in excess of 400 days without any other offer. The home is small, in need of updates and backs up to a funeral home on a central parking lot. Additionally, there are many foreclosure properties in the area.

17. The Debtor and the Trustee both believe that the proposed sale is in the best interests of the Debtor, his creditors and the bankruptcy estate, and shall terminate the burdensome requirement to pay property taxes and ongoing expenses to maintain the Property.

18. The sale will result in an additional payment to the unsecured creditors. The exact figure for the net sale proceeds is yet to be determined. The Debtor's interest in the sale proceeds

is non-exempt and therefore property of the bankruptcy estate.

WHEREFORE, the Debtor moves the court for an order approving the sale of his interest in the Property on the terms and conditions set forth herein and as set forth in the attached proposed order, and such other, further and different relief as may be just and equitable.

Dated: February 15, 2012

/e/ Mary C. Hoben
Curtis K. Walker, #113906
Mary C Hoben, #0335411
Andrew Walker, #0392525
Attorney for Debtor(s)
4356 Nicollet Avenue South
Minneapolis, MN 55409
(612) 824-4357

Verification. I, Stephen Ditty, the debtor and moving party in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 2-15-12

Signed:

A handwritten signature in cursive script, appearing to read "Stephen P. Ditty", written over a horizontal line.

**UNITED STATES BANKRUPTCY COURT
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MEMORANDUM OF FACTS AND LAW

FACTS

The facts supporting the requested relief are set forth in the verified Motion and attachment, and will not be repeated here.

LEGAL DISCUSSION

Section 1303 of the Bankruptcy Code states: “Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l) of this title.” *11 U.S.C. §1303.*

Section 363(b)(1) states: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, . . .”. *11 U.S.C. §363(b)(1).*

Section 541(a)(5)(A) states that property of the estate includes the following:

Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—
(A) by bequest, devise, or inheritance;
11 U.S.C. §541(a)(5)(A).

Section 1306(a)(1) brings property of the type specified in §541(a)(5)(A), and acquired after the commencement of the case but before the case is closed, into the chapter 13 estate.

The effect of these four statutes is to bring Linda Ditty’s one-half interest in the property located at 3214 Tyler St. NE, Minneapolis, Minnesota, into the bankruptcy estate; where it remained upon her death, and inheritance by her spouse and Co-Debtor, Stephen Ditty; who has the exclusive right to sell said Property.

A third party, EWR Services, LLC has offered to purchase the Property for the sum of \$81,000.00, upon completion of the probate proceedings, approval of the sale by

the bankruptcy court and the execution of any transfer documents that may be required by the Debtor and/or Chapter 13 Trustee, in order to consummate the sale under Minnesota law.

It is in the best interests of the Debtor, his creditors, and the bankruptcy estate, for the Court to approve this proposed sale. The sale will result in an additional payment of cash into the bankruptcy estate to increase the payout to the unsecured creditors.

CONCLUSION

For the reasons stated herein, the Court should approve the proposed sale of the Debtor's interest in Property located at 3214 Tyler Street NE, Minneapolis, Minnesota, on the terms and conditions stated herein and in the attached Purchase Agreement.

Dated: February 15, 2012

Respectfully submitted,
/e/ Mary C. Hoben
Curtis K. Walker, #113906
Mary C Hoben, #0335411
Andrew Walker, #0392525
Attorney for Debtor(s)
4356 Nicollet Avenue South
Minneapolis, MN 55409
(612) 824-4357

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ORDER APPROVING SALE OF REAL PROPERTY

At Minneapolis, Minnesota, _____, 2012

The above entitled matter came before the undersigned United States Bankruptcy Judge on the Debtor's motion for approval of the sale of certain real property of the estate.

Appearances, if any, were noted in the minutes.

Upon the verified motion, the arguments presented, and all of the files, records and proceedings herein,

IT IS ORDERED:

1. The Debtor is authorized to sell the Debtor's and the bankruptcy estate's interest in the property located at 3214 Tyler Street NE, Minneapolis, Hennepin County, Minnesota; legally described as:

Lot 012, Block 004 Chute Brothers 1st Addition to City of Minneapolis,
according to the recorded plat thereof. Hennepin County, Minnesota

to EWR Services, LLC, for the sum of Eighty-One Thousand Dollars (\$81,000.00).

2. The sale of the Debtor's and the bankruptcy estate's interest in the Property shall be "as is," and subject to the TCF Bank home equity loan, any liens, covenants, reservations and restrictions of record; any unpaid taxes, utility bills, charges or assessments or any kind or nature whatsoever, whether known or unknown; any defect of any kind in the record title to the Property; any hazardous condition, disrepair, building code violation, or other physical defect of the Property, whether past, present or future, latent or patent, it being the intention that no warranties or representations of any kind are being made by the Debtor to the purchasers.
3. The Debtor and/or Jasmine Z. Keller, Chapter 13 Trustee, shall execute such documents as may be required in order to effect the sale and transfer of the Property, subject to the terms and conditions of this Order.

Robert J. Kressel, United States Bankruptcy Judge

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UNSWORN CERTIFICATE OF SERVICE

I, Mary C. Hoben, declare under penalty of perjury that on February 15, 2012, I mailed copies of the foregoing Notice of Hearing and Motion For Approval of Sale of Property of the Estate, Memorandum of Facts and Law, and Proposed Order by first class mail postage prepaid to each entity named below at the address stated below for each entity:

United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Eric Brever
Foster & Brever, PLLC
2812 Anthony Lane S, Suite 200
Minneapolis, MN 55418

Jasmine Z. Keller, Chapter 13 Trustee
310 Plymouth Building
Minneapolis, MN 55402

Eric Russell
5120 Edina Industrial Blvd
Edina MN 55439

Carl Holmgren
105 Indianhead Point Road
Balsam Lake, WI 54810

Stephen Ditty
632 108th Ave. NW
Coon Rapids, MN. 55448

Joe Kasel
Coldwell Banker Burnet
941 Hillwind Road NE
Fridley, MN 55432

Stephanie Russell
EWR Services LLC
3320 Skycroft Dr
St. Anthony MN 55418

And Creditors on attached list

Executed on: February 15, 2012

/e/ Mary C. Hoben
Curtis K. Walker #113906
Mary C Hoben, #335411
Andrew Walker, #0392525
4356 Nicollet Avenue South
Minneapolis, MN 55409
(612) 824-4357

AAA Financial Services
PO Box 15026
Wilmington, DE. 19850-5026

Menards Retail Services
PO Box 15521
Wilmington DE 19850-5521

Bank of America
PO Box 15026
Wilmington DE 19850-5026

Messerli & Kramer
3033 Campus Drive Suite 250
Plymouth MN 55441

Best Buy Retail Services
PO Box 15521
Wilmington DE 19850-5521

Sallie Mae Servicing
attn Correspondence
PO Box 9500
Wilkes-Barre PA 18773-9500

Discover Card
PO Box 30943
Salt Lake City UT 84130

Sears
PO Box 6283
Sioux Falls SD 57117-6282

Herberger's
Po Box 15521
Wilmington DE 19850-5521

Target National Bank
C/O Target Credit Services
P O Box 1581
Minneapolis, MN 55440-1581

Home Depot Credit Services
PO Box 689100
Des Moines IA 50368-9100

TCF Mortgage
801 Marquette
Minneapolis MN 55402

JCPenney's
PO BO 981403
El Paso TX 79998-1403

Veterans Administration
Loan Guarantee Division
Fort Snelling Federal Building
St Paul MN 55111

Kohls
PO Box 3043
Milwaukee WI 53201-3043

Wells Fargo Card Services
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